

STATE OF MONTANA
BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

IN THE MATTER OF APPLICATION
FOR BENEFICIAL WATER USE
PERMIT NO. 1316-s40-0, STATE OF
MONTANA, DEPARTMENT OF STATE
LANDS, BY RALPH V. HURLBURT

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER

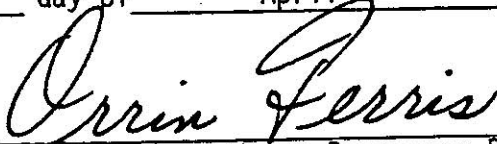
The Proposed Findings of Fact, Conclusions of Law, and Order in this matter, entered on December 13, 1974, by the Hearing Examiner, are hereby modified and adopted as the Final Findings of Fact, Conclusions of Law, and the Final Order.

ORDER

The Applicant's permit is granted with the following conditions:

1. That the proposed rebuilding of the existing dam be constructed within three-hundred (300) feet downstream from the existing dam or anywhere upstream on the Applicant's property from the existing dam on the unnamed coulee in question.
2. The permit is subject to prior existing water rights.

Done this fourteenth day of April, 1975.


Administrator, Water Resources Division
DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

CASE # 1314

BEFORE THE DEPARTMENT
OF
NATURAL RESOURCES AND CONSERVATION

IN THE MATTER OF APPLICATION
FOR BENEFICIAL WATER USE PERMIT
NO. 1316-s40-0, STATE OF MONTANA,
Department of State Lands by
Ralph V. Hurlburt

PROPOSED FINDINGS OF FACT
CONCLUSIONS OF LAW AND ORDER

Pursuant to the provisions of the Montana Water Use Act, Section 89-865, et seq., R.C.M. 1947, after due notice, a public hearing was held August 27, 1974, in the Courtroom of the Valley County Courthouse, Glasgow, Montana.

Bernard A. Blomer, an objector appeared at the hearing and testified in support of his objection. William Durell, Nashua, appeared in support of the objection. The applicant, State Lands, did not appear but a letter was received from Ted Schwinden, Commissioner, Department of State Lands which was read into the record by the Hearings Officer. Ralph V. Hurlburt, Miles City, appeared on behalf of State Lands and offered testimony. Following the hearing, Mr. Hurlburt submitted a letter to the Hearings Officer for consideration. After an opportunity was granted to the objector, Mr. Blomer, to object or reply, it was duly received into evidence. No reply or objection was received.

The law and the evidence having been fully considered, the following Proposed Findings of Fact and Conclusions of Law are hereby made and entered by the Hearings Officer.

FINDINGS OF FACT

1. On January 15, 1974, the Montana Department of State Lands duly filed with the Department of Natural Resources and Conservation an application to appropriate 2.0 acre-feet per annum in Valley County. The water will be diverted from an unnamed coulee in Valley County at a point in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 16, Township 28 N., Range 40 E. The water will be impounded by a dam and will be used

for stockwatering purposes from January 1 to December 31, inclusive, of each year.

2. Objections to the application were filed by H. Ronald Osterberg and Bernard A. Blomer of Glasgow. Mr. Blomer testified on behalf of his objection along with William Durell of Nashua who is presently leasing the Blomer property. The Blomer property is adjacent to the State Lands and downstream from the dam in question.

3. There is presently a dam existing on the property in question which is about a quarter of a mile upstream from the proposed dam. This proposed dam is presently in a state of disrepair and it is not economically feasible to have it repaired.

4. There is additional drainage coming into the unnamed coulee in question between the present dam and the proposed dam.

5. The objector, Bernard Blomer, has an apparent prior water right to all water below the existing dam on State Lands.

6. The Department of State Lands had an apparent prior right to all water in said unnamed coulee above the existing dam.

7. Subsequent to the hearing, the Department of Lands withdrew their application and submitted a new application to reconstruct the 15 acre feet dam that is already present on the coulee in question. This action was taken after it was determined at the hearing that the main reason for the original application was to rebuild the old dam. The objections were raised in reference to appropriation of additional water and not to the rebuilding of the already existing dam.

From the foregoing proposed findings of fact, the following proposed conclusions of law are hereby made:

PROPOSED CONCLUSIONS OF LAW

1. The Department of State Lands is allowed to withdraw their application for Beneficial Use Permit and their application for change of appropriation is accepted as being in conformance with the testimony and evidence taken at the hearing.

2. Under the provisions of Section 89-892 R.C.M. 1947, a permit to reconstruct a dam on the said unnamed coulee in question is required.

3. The applicants' intended use as described in the application is a beneficial use for which water may be appropriated. Such use is a prior use right of the Department of State Lands.

4. The application for change of use permit may be granted in accordance with the provisions of Chapter 8 of Title 89 of the Laws of the State of Montana.

Based on the above proposed findings of fact and conclusions of law, the following order is proposed:

PROPOSED ORDER

1. The applicants' permit is granted with following requirements:

That the proposed rebuilding of the existing dam be constructed within three hundred (300) feet downstream from the existing dam or anywhere upstream from the existing dam on the unnamed coulee in question.

2. This permit is granted subject to existing rights.

NOTICE: This is a proposed Order and will become final when accepted by the Administrator, Water Resources Division, Department of Natural Resources and Conservation. Written exceptions to the proposed order shall be filed with the Department within ten (10) days of service upon the parties herein. Upon receipt of any written exceptions, opportunity will be provided to file briefs and to make oral arguments before the Administrator of the Water Resources Division.

13 Dec 74
Date

Gary L. Spaeth
Gary L. Spaeth
Hearing Examiner